

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6563 of 1998

with

SPECIAL CIVIL APPLICATIONS NO.7126, 7221 AND  
7869 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SURESHBHAI @ PILOT S/O.

GOVINDBHAI BHARWAD

Versus

STATE OF GUJARAT

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Appearance:

MR SANJAY M AMIN for Petitioner in SCA 6531 of 1998.

MR. GOHIL, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/02/99

ORAL JUDGEMENT

1. All these petitions arise out of an order of preventive detention passed by the Commissioner of Police, Ahmedabad, on 22nd July, 1998, detaining the petitioners exercising powers under Section 3(1) of the

Prevention of Anti-Social Activities Act ("PASAA" for short) with effect from 22nd July, 1998. The petitioners are detained on the ground that they are dangerous persons.

2. Upon considering the grounds of detention, it is found that they are all connected with the same offence and the statements of witnesses also relate to the same incidents. The detaining authority has recorded that the petitioners-detenu are involved in activities which are prejudicial to the public order and that they are dangerous persons as envisaged under Section 2(c) of the PASAA and, therefore, members of public are afraid of them and are not prepared to lodge complaint against them or to give evidence against them and, therefore, they are required to be detained.

3. It has been argued on behalf of the petitioners that only one offence is registered against the petitioners under Section 120(b) of the Indian Penal Code and Sections 25(1)(b)(a) of the Arms Act. Statements recorded in respect of incidents on 15th June, 1998, 20th June, 1998, 2nd July, 1998 and 15th July, 1998 are recorded belatedly. Reliance is placed on a decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police & Ors., as reported in 36(2) GLR 1268 and a decision of a Division Bench of this High Court in the case of Hafijuddin Fazaluddin Kazi v. Commissioner of Police, Ahmedabad City and Another, as reported in 33(2) GLR, 1332.

4. On the other hand, learned Assistant Government Pleader appearing for the respondents has opposed the petitions. According to him, the petitioners are involved in serious offence and offence is registered against them. He submitted that the petitioners are trafficking in deadly weapons and fire arms and have disturbed public order to pursue their illegal activities. He has placed reliance on the decision of David and Another v. Union of India (1992) 4 SCC 154 and Ramveer Jatav v. State of U.P. and Anr., as reported in (1986) 4 SCC 762 and urged that even in case of solitary incident, if there is subjective satisfaction of the authority concerned, an order of detention can be passed.

5. Undisputedly, the petitioners are detained as they are found to be dangerous persons by the detaining authority. Dangerous person is defined in Section 2(c) of the PASAA as under :-

"'Dangerous Person' means a person who either, by himself or as a member or a leader of a gang habitually commits, or attempts or attempts to commit or abets the commission of any of the offences, punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, [XIV of 1860], or any of the offences punishable under Chapter V of [the Arms Act, 1959."

It is, therefore, necessary for the detaining authority to indicate that the detenu is involved in habitual commission or attempts of commission or abetment of commission of offences punishable under Chapter XVI and XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. Unless involvement of the detenu is shown to be of a repetitive nature in commission of offence under Chapter XVI or XVII of the Indian Penal Code and Chapter V of the Arms Act, he cannot be considered "habitual offender" and, consequently, he cannot be said to be a dangerous person. In the instant case, only one offence is registered against the petitioners-detenu. As regards the alleged use of force or disturbance to public order emerging from the statements of the witnesses, the Division Bench of this High Court in the case of Hafijuddin Fazluddin Kazi (supra) observed :-

"It is indeed true that certain statements were also recorded by the sponsoring authority but after having a careful look at the above said statements, the Bench decision proceeds to say, that it cannot be said that the petitioner would be a dangerous person as defined under the relevant provisions of PASA Act, 1985."

The Honourable Supreme Court, in case of Rashidmiya Shaikh v. Police Commissioner, Ahmedabad, A.I.R. 1989 SC 1703 also observed that a solitary incident would not be sufficient to conclude that the detenu was habitually committing offences or attempting or abetting commission of offences.

6. It would be worth noting that the decision relied upon by learned Assistant Government Pleader, if perused, indicate that they were rendered in respect of continuous detention under the provisions of Section 3(1) and (2) of the National Security Act, 1980. The Section runs as under :-

"Section 3. Power to make orders detaining

certain persons :- (1) The Central Government or the State Government may :-

- (a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or
- (b) if satisfied with respect to any foreigner than with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India.

it is necessary so to do, make an order directing that such person be detained.

- (2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained."

7. It is, therefore, amply clear that the ingredients for declaring a person as a 'dangerous person', as contemplated under the PASAA are not the ingredients required under the National Securities Act. The criteria for considering the detention in case of both the laws are different and the decisions relied upon by the learned Assistant Government Pleader, therefore, cannot be help the respondents in any manner.

8. In the result, screening of the papers and the facts emerging from the affidavit of respondents indicate that the subjective satisfaction arrived at by the detaining authority to the effect that the petitioners-detenu require to be preventively detained under PASAA stands vitiated and the petitioners-detenu cannot be preventively detained on the basis of the material on record.

9. In the result, these petitions deserve to be allowed and the impugned orders of detention require to be quashed and set aside. Accordingly, the order of detention of the petitioners passed on 22nd July, 1998 stands quashed and set aside. The respondents are

directed to release the petitioners-detenu from the detention forthwith, if they are not required in any other criminal case or proceeding. Rule is made absolute, accordingly.

[ A.L. DAVE, J. ]

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